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**Y-Tech Services, Inc. and International Association of
Machinists and Aerospace Workers, AFL-CIO.**
Case 10-RC-131670

January 29, 2015

**DECISION AND DIRECTION OF
SECOND ELECTION**

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON
AND MCFERRAN

The National Labor Relations Board, by a three-member panel, has considered objections to an election held August 7, 2014, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 37 for and 41 against the Union, with 4 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings and recommendations,¹ and finds that the election must be set aside and a new election held.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are

¹ We adopt the hearing officer's recommendation to set aside the election because five eligible voters, a determinative number, were prevented from casting ballots by their work assignments. The Employer contends that the four ballot challenges should first be resolved because that could potentially determine whether the five disenfranchised voters affected the election result. For the reasons stated in *Kansas City Bifocal Co.*, 236 NLRB 1663, 1664 (1978), we disagree and decline to remand for a second hearing on the challenges. While we would be reluctant to set aside an election in the absence of evidence demonstrating that circumstances attributable to a party had a provable prejudicial effect, the fact that a potentially determinative number of eligible employees could not cast ballots due to their work assignments away from the polling location requires setting aside the election. *Id.* Further, the Board's procedure for the conduct of its elections requires that all eligible employees be given the opportunity to vote. *Yerges Van Liners, Inc.*, 162 NLRB 1259, 1260 (1967). Such a procedure was not maintained here.

Member Johnson agrees that the election must be set aside on this record. However, he would find that an employee's failure to vote would not be grounds for setting aside an election if it were shown, as it has not been shown here, that the employee had consciously chosen not to participate in the election by accepting a truly voluntary work assignment.

In the absence of exceptions thereto, we adopt the hearing officer's recommendations to overrule the Petitioner's Objections 1 and 2.

those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been re-hired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by the International Association of Machinists and Aerospace Workers, AFL-CIO.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *Excelsior Underwear*, 156 NLRB 1236 (1966). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C. January 29, 2015

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD